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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,679	07/30/2001	Stephen J. Boies	YOR920000305US1	9839

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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,679

Applicant(s)

BOIES ET AL.

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15,17,18,42 and 44-56 is/are pending in the application.
- 4a) Of the above claim(s) 45-51 and 53-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15,17,18,42,44 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Claims 45-51, 53-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed, but arguments directed the PCT unity cannot overcome the fact that the examiner sees patentable distinctness between each of the species set forth in the last office action. Therefore, the Requirement is deemed FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2,3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Also, claims 2, 3 fail to further limit the scope of the invention in that the claims are subject to being further limited from a system e.g. article standpoint and thus must add article limitations and not mere price adjustments.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-15, 17, 18, 42, 44, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. ' 878 in view of Fisher et al.

Walker disclose a network comprising a plurality of user terminals (buyer seller interfaces 444, 401, 405, 406); a memory device for storing a predetermined event for said merchandise (seller database 700); and at least one processor (CPU 205), accessible by said plurality of user terminals (interface 280 effects accessibility), for automatically adjusting a price of said merchandise based on said predetermined event (cpu accepting a price consistent with inventory levels/demand is read as automatically adjusting price, see col. 7 lines 60-62 seller's price flexibility), and matching buyers with said merchandise to facilitate a transaction (system matches buyer with seller col.16 lines 47 et seq).

However, they fail to disclose adjusting of a price upon the occurrence of a predetermined event and creating a document memorializing this adjustment. But, Fisher et al do disclose reducing/increasing e.g. adjusting the price of merchandise if after a period of time a certain sales volume is or is not achieved. See, col. 12 lines 1-17 and the system generates a document, e-mail notification, 24 which is considered to be

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a document stored in one of memory 31/83/82 and viewable using a web browser e.g. AOL e-mail account. It would be obvious to modify Walker to include the viewable document as the motivation for this is the benefit to the party interested in the merchandise to have before him/her an ascertainable price on which to base his decision to buy or not to buy.

RE claim 2. A flight is time sensitive product. Col. 2 line 49.

Re claim 3: See fisher et al. floating closing time col.13 which can decrease bid period, the motivation for this combination would be to increase throughput of product.

Re claim 4. Walker et al. disclose a central server 200 accessible by said plurality of user terminals for storing transaction data.

RE claim 5 : inherent to a terminal is a processor; a memory device accessible by said processor for storing data, and a video display for displaying an image representing said data, and an input device.

Re claim 6,7,8: see col. 8 lines 46-47 for disclosure of network comprises an internet-based network which covers a processor is remote from said plurality of user terminals and a plurality of processors.

RE claims 9,10,12, 14, 15 , 42: see Walker et al. col. 7 lines 60-62 seller's price flexibility e.g. reducing price as expiration period e.g. flight time gets closer to expiring.

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RE claim 13: wherein a seller uses a user terminal to input selling data (sellers only obtain buyer data based on given criteria) and a buyer uses a user terminal to input purchasing data (CPOs), and wherein said at least one processor matches buyers with merchandise by comparing said selling data and said buying data (see col. 7).

Re claim 44: In Fisher et al. it is disclosed to adjust price based upon quantity. Claim 44 recites the reversal of this. To utilize this reversed concept in Walker would be obvious the motivation being the inventory driven pricing.

Claims 1-15, 17, 18, 42, 44, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art Fig. 1 and as discussed in the specification on pages 1-4 in view of Walker et al. '268 and Fisher et al.

Applicant's admitted prior art discloses as shown in Figure 1, a conventional electronic commerce system 100 having a multivariate negotiation system 150 for iterative bargaining which enables a sponsor to create and administer a community between participants such as buyers and sellers having similar interests, and allows a buyer to search and evaluate seller information, propose and negotiate orders and counteroffers that include all desired terms, request sample quantities, and track activity. The conventional negotiation system 150 also allows a seller to use remote authoring templates to create a complete Website for immediate integration and activation in the community, evaluate proposed buyer orders and counteroffers, and negotiate multiple variables such as price, terms, conditions, etc..

Specifically, the conventional negotiation system 150 communicates over a

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telecommunications link 110 to the internet 120. The system 150 includes the software needed to create communities, communicate with sponsors 130 and participants 140, and store the results. Participants in the community can, therefore, connect to the community sponsor through the internet 120 and the negotiation system 150, using only a standard internet browser and a conventional desktop computer to activate the browser over a link to the internet. The website 175 of the negotiation system 150 has webserver hardware 155 containing standard webserver software, server farm 160 and database server hardware 180 storing data 185. The webserver 155 enables communications in the transmission control protocol/internet protocol (TCP-IP) format, to be received from the internet 120. The operation of the negotiation system 150 begins with an initializing event. A participant 140 may propose terms to another participant on an initiating terminal (or desktop computer or workstation, etc.) over the internet 120 through the conventional electronic commerce system 100, thereby creating a communications path which is ultimately directed by a multivariate negotiation system 150 over the internet 120 to the destination terminal at which the selected or other participant 140 is active. The terms could be, for example, the placement of an order from a buyer or a seller's response to a general request for proposal (RFP).

However, the conventional electronic commerce system 100 does not conveniently automatically adjust a price of merchandise. But, Walker et al. '268 disclose automatically determining a price and identifies an expiration date for a particular merchandise and calculates a quantity of an order to be purchased on a

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particular date based on a consumption rate for said merchandise so as to minimize a total price for said order (see col. 6 lines 16-65 e.g. sword fish pricing). It would be obvious to modify the AAPA with the automated pricing device of Walker 268 because this would prevent spoilage of fish for example by pricing so that it all sells. Official notice is taken regarding the old practice of pricing based on fuel costs e.g. destination and quality.

The above combination further fails to disclose adjusting of a price upon the occurrence of a predetermined event and creating a document memorializing this adjustment. But, Fisher et al do disclose reducing/increasing e.g. adjusting the price of merchandise if after a period of time a certain sales volume is or is not achieved. See, col. 12 lines 1-17 and the system generates a document, e-mail notification, 24 which is considered to be a document stored in one of memory 31/83/82 and viewable using a web browser e.g. AOL e-mail account. It would be obvious to modify Walker to include the viewable document as the motivation for this is the benefit to the party interested in the merchandise to have before him/her an ascertainable price on which to base his decision to buy or not to buy.

Re claims 2,3: Fisher et al discloses time sensitive pricing at col.13.

Re claim 4 :AAPA disclose a central server.

Re claim 5: inherent to any computer are the elements set forth in claim 5.

Re: claim 6: see Dutch Auction format col.9.

Re claims 7,8,inherent to the computer is a processor(s).

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Re claims 9, 10, 11,12, 13, 14,15, 42, 44 Fisher discloses: Progressive Auction, and Mark Down formats each of which is time based and insures maximum depletion of inventory for top price.

Re claims 17 and 18: Official notice is taken of the old and notorious use of websites to access information.

FINAL:

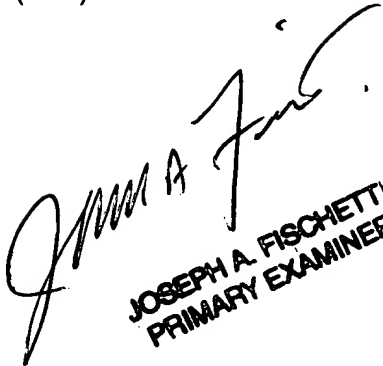
Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.02(l)(3). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.


JOSEPH A. FISCHETTI
PRIMARY EXAMINER